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David J. Wetherall

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EXAMINER

BARQADLE, YASIN M

ART UNIT

PAPER NUMBER

2456

MAIL DATE

DELIVERY MODE

03/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: DAVID J. WETHERALL,
STEFAN R. SAVAGE, AND
THOMAS E. ANDERSON

Application No. 09/825,139
Technology Center 2456

Mailed: March 12, 2009

Before DELORES LOWE, *Review Team Paralegal*
LOWE, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 29, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

APPEAL BRIEF, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Appeal Brief filed November 8, 2007 under the heading “Grounds of rejection to be reviewed on appeal” is unclear and/or is not consistent with the grounds of rejection of claims of record. The grounds of rejection of the claims as provided in the Appeal Brief must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified.

A review of the last Office action, including any mailed Advisory Action(s) finds that claims 4-9, 12-13, 21 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Primak et al. USPN (6598077) in view of Canion et al USPN (20020108059) and further in view of Bull et al USPN (6799270); whereas Appellants have either not indicated the grounds of rejection of these claims or has improperly listed these claims as 4-9, 12-13, 20, 21 and 23-25 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Primak Patent in view of the Canion Application and further in view Bull et al. (USPN 6,799,270). Correction of the Grounds of rejection to be reviewed on appeal for all claims is required.

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to hold the Appeal Brief filed on November 8, 2007 defective;
- 2) notify Appellants to file a paper properly addressing the Grounds of rejection of all claims; and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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